IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7910 OF 2004

Fatima Hussaini Radhanpurwala .. Petitioner.
Vs.
Pravin Himatlal Meghani & Ors. .. Respondents.

Ms.J.P.Thakkar for the petitioner.
Mr.Jimmy Mehta with Mr.H.G.Bhambhani for the respondent no.1.
Mr.J.S.Kini for respondent no.2.
Mr.Ashok K.Trivedi for respondent no.3.

CORAM : D.B.BHOSALE, J.

DATED : 30TH SEPTEMBER, 2004

P.C.:

. Ms.Thakkar, learned counsel for the petitioner seeks leave to delete respondent nos.4a to 4c. Leave is granted. The amendment to be carried out during the course of the day.

2. Heard Ms.Thakkar, learned counsel for the petitioner, Mr.Mehta, learned counsel for respondent no.1, Mr.Kini, learned counsel for respondent no.2 and Mr.Trivedi, learned counsel for respondent no.3.

3. Rule, returnable forthwith.

4. Mr.Mehta, learned counsel waives service for respondent no.1, Mr.Kini, learned counsel waives service for respondent no.2 and Mr.Trivedi, learned counsel waives service for respondent no.3. By consent of the parties taken up for final hearing.

5. In this writ petition, the petitioner has impugned the order dated 21.8.2004 passed by the Addl. Chief Judge of the Small Causes Court, Mumbai in Revision Application No.22 of 2004 in Interim Notice No.5272 of 2003 in R.A.D./E. Suit No.1155/1905 of 2002, by which the revision has been allowed and the order of the learned trial Judge dated 8.12.2003 has been set aside. By order dated 8.12.2003, the petitioner-defendant was allowed to file written statement on or before 14.1.2004. In the revision, the Small Causes Court committed an error of law by relying on the judgment of this court in **Iridium India Telecom Ltd. Vs. Motorola INC and Anr. 2004 (1) Maharashtra Law Journal 532** holding that the court has no powers to extend the time to file written statement if it is not filed within the time stipulated under Order 8 Rule 1 of Civil Procedure Code. The learned Judge of the Small Causes Court

has completely ignored the judgments of this court in **Chintaman Sukhdeo Kaklij and Ors. Vs. Shivaji Bhausaheb Gadhe and Ors. Writ Petition No.2847 of 2004 dated 12/13.8.2004** by which the view taken by the learned Single Judge of this court in **Shailaja A. Sawant Vs. Sayajirao Ganpatrao Patil 2004(2) Mh.L.J. 419** has been upheld. In view of this the learned counsel appearing for the parties stated that the impugned order be set aside. Mr.Mehta, learned counsel for the respondent-plaintiff, on instructions, stated that the respondent-plaintiff has no objection for taking the written statement of the petitioner on record. Hence I pass the following order:

(a) The impugned order dated 21.8.2004 passed by the Addl. Chief Judge, Small Causes Court, Bombay is quashed and set aside. Consequently the order dated 8.12.2003 stands affirmed.

(b) The petitioner is allowed to file their written statement as per order dated 8.12.2003 passed by the learned Judge of Small Causes Court in Interim Notice No.5272 of 2003 within two weeks from today.

(c) Needless to say that the trial court shall endeavour to dispose of the suit within the time frame prescribed by order dated 8.9.2004 passed in Appeal No.117/2003 in Interim Notice No.4873/2003 in Suit No.1155/1905/2003.

. The petition is disposed of.

(D.B.Bhosale, J.)